UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
		Docket # 22-cv-08853-
HAFIZOV, RINAT,	:	JPC-RWL
Plaintiff,	:	
- against -	:	
BDO USA, LLP, et al.,	:	New York, New York
		June 6, 2023
Defendants.	:	
		DISCOVERY CONFERENCE
----------	:	

PROCEEDINGS BEFORE
THE HONORABLE ROBERT W. LEHRBURGER,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: WIGDOR LLP
BY: DAVID EVAN GOTTLIEB, ESQ.
MONICA HINCKEN, ESQ.
85 Fifth Avenue, 5th Floor
New York, New York 10003

For Defendants: MCDERMOTT WILL & EMERY LLP
BY: LINDSAY FAYE DITLOW, ESQ.
One Vanderbilt Avenue
New York, New York 10017-5404

Transcription Service: Carole Ludwig, *Transcription Services*
155 East Fourth Street #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service

INDEX

E X A M I N A T I O N S

Witness	Direct	Cross	Re-Direct	Re-Cross
None				

E X H I B I T S

Exhibit Number	Description	ID	In	Voir Dire
None				

THE CLERK: We're here in the matter for a discovery conference, Hafizov v. BDO USA, LLP, 22-cv-9953.

Attorneys, please state your name for the record, starting with plaintiff.

MR. DAVID E. GOTTLIEB: Good afternoon, your Honor. David Gottlieb and Monica Hincken from Wigdor LLP for the plaintiff.

HONORABLE ROBERT W. LEHRBURGER (THE COURT): Good afternoon.

MS. LINDSAY F. DITLOW: Good afternoon, your Honor. Lindsay Ditlow from McDermott Will & Emery on behalf of defendants.

THE COURT: Good afternoon. All right, so on account of the letter motion by the plaintiff that was filed at ECF-50 on May 19, 2023, raising a number of discovery issues, I have the response from the defendant at document 53. And, really, these clearly indicate a disagreement about the scope, I would say, of the lawsuit. But we need to go through the various issues. So the first one, I guess, is -- well, you tell me, Mr. Gottlieb, what would you like to start with?

MR. GOTTLIEB: Well, your Honor, if I may, for a moment?

THE COURT: Yes.

MR. GOTTLIEB: The parties have a number of disputes that go beyond the letter. We've indicated in the letter that these highlight the sort of major issues, but there are additional issues, as well. We were limited to a three-page limit under Judge Cronan's rules, so we included as much as we could. We've had a number of meet-and-confers. We've worked together before, but we just have very -- very --

THE COURT: You have a different view of things.

MR. GOTTLIEB: -- broad disagreements on the scope --

THE COURT: Yes.

MR. GOTTLIEB: -- of discovery.

In terms of where to start, if it's okay with your Honor -- and I promise I'll keep it brief -- I'd like to just describe the case for a moment, if I could?

THE COURT: That's all right.

MR. GOTTLIEB: Your Honor, this is a retaliation case. Mr. Hafizov was an employee at BDO, and the allegations of the Complaint, the gravamen of the Complaint is that he raised a variety of complaints about his manager, Janet Bernier, her mistreatment and

discriminatory conduct towards a variety of employees on a variety of bases, discriminating against Jewish employees, discriminating against employees based on their sexual orientation. Part of it included referring to his own Russian national heritage in a way that he felt was offensive. And the case is about him being retaliated against for raising all these concerns about Ms. Bernier. The defendants have repeatedly, in every single document that's been filed in this case, tried to reframe this as a case of merely Russian heritage discrimination, which is not and has never been what this case is about. And the reason I think it's important to address this is that it goes directly to the heart of almost all the discovery disputes that follow. The Russian heritage discrimination allegations constitute nine of the 156 paragraphs of the Complaint. So I thought it was important to mention that from the start.

There's a lot more I could get into in terms of the details of the case, but I think in terms of responding to your Honor's question where to start with the discovery disputes, I think probably a logical place to start would be the issue of the scope of plaintiff's ability to take discovery on the discriminatory conduct

that Ms. Bernier engaged in towards others, including the specific allegations in the Complaint, as well as Ms. Bernier and the other decision-makers -- I shouldn't strictly focus on Bernier even though she is the primary wrongdoer here, Ms. Bernier and the other individual defendant -- their engagement in discriminatory and retaliatory conduct towards others. And so this is a dispute that comes up in these types of cases not infrequently, and there's a substantial body of case law that addresses a plaintiff's ability to take what's called "me too" discovery evidence during discovery. So I think a logical place to start is the issue of discriminatory and retaliatory conduct towards others and our ability to take discovery on that.

THE COURT: Okay. And you conflated two issues there, at least for me, which is you said "me too" discovery. There is discovery as to similarly-situated individuals, which is narrow; and then there is what I understand you to be seeking beyond that, which is discovery into all these other alleged incidents that the plaintiff raised in addition to the specific comments directed to him. At least according to the Complaint, he complained not only about the statements about him in Siberia but also the various incidents and

references, be it to Jews, be it to Italians, be it to others, that he raised. And you're claiming that he was retaliated against for bringing to management's attention all of those. Is that right?

MR. GOTTLIEB: That's correct.

THE COURT: All right, so Ms. Ditlow, why don't you help me understand why he wouldn't be entitled to discovery on those, which are alleged in the Complaint, and also given Judge Cronan's denial of the motion to strike?

MS. DITLOW: Thank you, your Honor. And I think your first comment that, you know, there's disagreement as to scope is correct. I think they are highlighted in the Complaint and now how they've taken to frame their allegations are also very different, if we look even at the Complaint, let alone what has come out through the discovery that we have produced, which is voluminous, to this time. It's not as though he was complaining about an environment in which he was subsumed in, which is hostile, he's hearing all these things. In fact, his Complaint amounts to he and a fellow coworker renumerating about allegations and gossip that they might have heard about, you know, things that Ms. Bernier has engaged in. They don't have

any identified individuals; they don't have any identified statements; they don't have any identified departments, time frames or anything. And, as we pointed out in our letter, this comparator -- take for the first bucket mentioned -- to be discoverable has to be similarly situated in all material respects.

THE COURT: But wait, wait. Again, let's not conflate. There is the issue of similarly situated, and then there is an issue where someone, as here alleges, retaliation for bringing up incidents related not only to remarks directed to them but also remarks directed to others. And you could imagine, for instance, a manager who might say, "That doesn't give "me too" much concern; he's just talking about himself," whereas, that manager might say, "Oh, my goodness, he's raising all these concerns about all these other individuals; I've got to get rid of this guy." That could be theoretically different situations. So I just want to make sure we treat those separately.

MS. DITLOW: Yes, your Honor. And I think, then, the scope of what would be "me too" and how these similarly-situated employees would be treated, as you said, this is, in their view, a retaliation case. So this would be "me too" evidence of retaliation. They in

fact haven't requested evidence of "me too" retaliation; they've in fact requested alleged allegations related to all these types of discrimination that might occur. And that's not what their Complaint frames. As I said, it would be in retaliation for these complaints. A "me too" component would be complaints related to somebody who has similarly said, "I raised all these allegations of discrimination, and then I was retaliated against." But, as pointed out, that's not what they've requested, and that wouldn't be relevant here if we're just going on all their allegations about people who may or may not have made allegations of discrimination but who do not have any evidence of claims of retaliation in connection with therewith.

MR. GOTTLIEB: Your Honor, can I address some of those issues?

THE COURT: Yes, please go ahead.

MR. GOTTLIEB: So I think it is important that we don't conflate issues, but I think there may be a lack of clarity over the issues here. Mr. Hafizov raised complaints about a variety of discrimination, like I said; and defendants are going to a trial for summary judgment, what-have-you. They are going to deny that Ms. Bernier engaged in any discriminatory conduct.

That should give us the opportunity to take discovery into her actual discriminatory conduct to demonstrate that Mr. Hafizov in good faith complained about things that he observed. So they shouldn't be able to limit the "me too" evidence to retaliation; we should be able to take discovery on Ms. Bernier's conduct that is similar to that which our client complained about. So that's, I think, one issue.

Then the next --

THE COURT: Similar because that's what's required for similarly situated, or are you talking about some other scope?

MR. GOTTLIEB: Well, I mean, when you look at "me too" evidence, other people who have been subjected to discrimination and retaliation and when is that discoverable or admissible, I mean, the Supreme Court has decided this issue in *Sprint v. Mendelsohn*, and they've said that there's no per se rule against discovery or even admissibility of "me too" evidence --

THE COURT: Well, you're using "me too", but I want to understand what you mean by that. Do you mean similarly situated, or are you talking about something else?

MR. GOTTLIEB: Well, what I mean by "me too" is

when can a plaintiff use evidence that there was mistreatment towards others can be used to demonstrate mistreatment towards the plaintiff.

THE COURT: And isn't the test whether they are similarly situated?

MR. GOTTLIEB: Well, the test is actually not whether they're similarly situated; the test is whether there is enough -- under *Sprint v. Mendelsohn*, whether based on a fact-intensive inquiry there's reason to believe that that evidence is relevant. And that can take on --

THE COURT: Well, wait. That's very different. So there's a -- how is this a different context than the similarly-situated test? You've just gone from similarly situated in all material respects, which is required for what you're calling "me too" evidence, versus a standard that says because it's relevant under the Federal Rules, essentially. So something's not right there.

MR. GOTTLIEB: Well, the similarly-situated test, that deals with when you're looking at how other people are treated relative to you. So --

THE COURT: Yes.

MR. GOTTLIEB: -- for instance, one person

engages in a certain type of misconduct and they're terminated; another person engages in similar misconduct and they maybe aren't terminated. So that disparate treatment, you're going to look across similarly-situated people.

THE COURT: Agreed.

MR. GOTTLIEB: But when you're looking at -- it's really -- it's 404(b) evidence, whether a particular -- whether mistreatment, discrimination towards another person at a company can be used in a plaintiff's case, that is different than the disparate treatment, similarly-situated test. And what the Supreme Court has done -- there's a lot of cases that follow this -- is that you have to look at a constellation of factors when determining whether mistreatment towards somebody else can be used. And the factors include was the mistreatment by the same person. That, under the case law, is the most paramount factor. But then other things, such as same geographic area, same department, same type of discrimination. So there's a constellation of factors that are considered, but what Courts say across the board and what *Sprint v. Mendelsohn* says in particular is that these factors really only come into play when you're looking at --

when you're trying to introduce "me too" evidence of wrongdoing by another supervisor. So when the same person, the same defendant, when you're looking for information and discovery and evidence that the same exact wrongdoer has engaged in discriminatory treatment towards others, it doesn't matter whether the person was a senior manager versus an associate versus a managing director. That might come into play in the similarly-situated test, but if the same person is discriminating against people at all different levels, that's all going to be relevant. That's all going to be relevant under *Sprint v. Mendelsohn* because it shows, based on 404(b) evidentiary test, that this person has a *modus operandi* or has as plan or intent or opportunity to engage in discriminatory conduct.

And so that's why we're seeking documents and information related to Ms. Bernier's discriminatory, retaliatory conduct --

THE COURT: Well, again, now you're conflating things. So you start out by saying this is a retaliation case. Now you've focused on discrimination, and now you've just said discrimination/retaliation. And as Ms. Ditlow pointed out, she is making a point about if it's a retaliation case, then we should be

looking at other instances where there was retaliation for complaining about discrimination. But you're taking it to the discrimination focus.

MR. GOTTLIEB: Well, respectfully, the gravamen of the Complaint, if I were to point to the primary claim here, yes, it is retaliation. But this is not merely a retaliation case. There is a discrimination, a substantial discrimination component, too. And the reason I thought it important to make the point that this is primarily a retaliation case is that defendant in every single paper keeps saying this is a Russian heritage discrimination case and trying to narrow it to that. And that's not the way the Complaint is framed. So, respectfully, it's not merely a retaliation case. Even if it were merely a retaliation case, the issue that under *Sprint v. Mendelsohn* would not be -- it would not be because the other "me too" evidence is discrimination, not retaliation, it's not relevant. Then you start doing a fact-intensive inquiry; and, respectfully, your Honor, given that all the evidence that we're seeking is related to the same exact wrongdoer, it's all Ms. Bernier and then Mr. Dyment, who was involved in the termination decision, as well.

This should be noncontroversial. If we were

seeking evidence of discrimination or retaliation by other people at BDO in other offices that has no temporal, geographic or any other crossover, then that's a different issue and then there's potentially a scope issue. But when we're talking about just Ms. Bernier, whether it's discrimination or retaliation, that is narrowly tailored to this case under the prevailing case law on this issue.

And, your Honor, again, we were limited to three pages in our brief. I would be more than happy to brief the extensive case law in a fully-brief motion that described the -- when this issue comes up, the issue is when a plaintiff is seeking a scope that goes beyond the wrongdoers in this case. And that's not what we're doing. So, respectfully, I don't think there's any issue and any compromise to be made, given the scope that we're seeking and the case law.

THE COURT: So, according to you, then, in any case where allegations are made that a particular person engaged in discrimination, any incidents of discrimination by that person against anyone else is discoverable?

MR. GOTTLIEB: Correct. I mean, I guess I would say this. The case law is not -- does not provide

for those sort of bright-line rules. But under the case law, the answer is almost always going to be yes, and then the question becomes how far beyond that decision-maker can you go. Can you go to other people in the same department who are supervised or discriminated against by somebody else? Can you reach to other people in -- you know, who are maybe lower down within that supervisor's organizational chart, even if they didn't have direct discrimination from that supervisor? So that's -- those are the scope issues that come up in these cases, and that's, again, what the case law says in abundance. I mean, there's a whole line of cases following *Sprint v. Mendelsohn*, which was in 2008 that's all about how far beyond the decision-maker can you go, how far beyond the tort-feasor, the wrongdoer can you go. So for us -- again -- sorry, I don't want to belabor and repeat myself, but that's our position, your Honor.

THE COURT: All right, okay, Ms. Ditlow?

MS. DITLOW: yes, your Honor. And Mr. Gottlieb has, you know, quoted from the case law, but I think he's still suggesting it's much broader than the law allows. He's suggesting that, if there's a claim of discrimination, it's discoverable against the alleged

employer or the individuals, anyone else. And that's not the case. What the case law says is that the relevant -- you know, to take the relevancy (indiscernible) 404(b) in *Mendelsohn* is that Courts have repeatedly held the allegations --

THE COURT: Can you just slow down a bit?

MS. DITLOW: -- allegations regarding employer hostility or discrimination towards an individual protected class. The relevant and potentially discoverable information are those in the same protected class. So if Mr. Gottlieb wanted to amend and revise to those national origin discrimination, then that would possibly fall within the scope. But that's not what he's requested. Discrimination regarding any individual based on race, religion, ethnicity, gender, you know, a myriad of things. And those aren't relevant. To say somebody discriminates against, let's say, one race or then also would discriminate against, you know, people of a particular sexual orientation isn't necessarily relevant there. And beyond the scope suggests that just because it relates to the same person, that that's a narrow request.

THE COURT: But if the person -- if the plaintiff, as here, says they were retaliated against

for bringing to management's attention let's say ten different incidents -- and they're all different types of discrimination -- isn't it relevant that -- aren't all those incidents relevant? Because they reform part of what he was complaining about tan was retaliated against for?

MS. DITLOW: But if the -- but he's not seeking evidence regarding plaintiff's complaint; he's seeking evidence potentially of other individuals --

THE COURT: Well, but the allegation is that he, the plaintiff, brought to management's attention saying not only have I been discriminated against, but there have been all these other incidents against other people. I think that's a problem. Take care of it. And then he claims he's retaliated against for raising that issue, which includes all these other incidents. Does that implicate them, at least to some extent?

MS. DITLOW: Potentially. But what I think is different here and I think that's very where the fact-specific and (indiscernible) come into play because what's not happening here is here's all these instances of potential discrimination, I'm raising them, you know, take care of it. They have not identified, even, individuals or anything or even people that were

currently even employed by BDO. So this is nothing more than a fishing expedition.

THE COURT: Okay. Anything else you want to say, Mr. Gottlieb?

MR. GOTTLIEB: There is, your Honor. This case in particular, it would be extraordinarily -- it would be impossible to try to say the plaintiff is entitled to evidence that Ms. Bernier engaged in certain types of discrimination but not others, because looked at in its totality, the allegations that Mr. Hafizov has made in the Complaint, including the allegations that are public from other complaints that have been filed against Ms. Bernier. The allegations are that she discriminates against virtually everybody. She discriminates against people on disability, on sexual orientation, on religion, on race, on national origin and ethnicity. So say, oh, we're going to find one protected class and carve it out," I mean, the point is that she is somebody who engages in an extremely wide array of discriminatory conduct. And if the defendants at trial or at summary judgment intend to argue that she does not do these things, then we're entitled to take discovery on that.

THE COURT: All right, table that issue for a bit. We come to other discovery, specifically about

similarly-situated comparators -- that's a subset of this, I would say. Is there an actual discrepancy, disagreement as to who qualifies?

MR. GOTTLIEB: Well, I think, your Honor -- I don't think it is a subset, for the reason I was starting to explain before, which is whether -- BDO says Mr. Hafizov was terminated for certain specific deficiencies. And what we intend to establish is that other people engaged in similar sorts of performance issues and were treated dissimilarly.

THE COURT: Okay, well, you can't -- it's not just other people; it's people who are similarly situated in all material respects.

MR. GOTTLIEB: Well, that's a document, so exhibit -- but this, your Honor, my colleague, Ms. Hincken, is going to handle.

THE COURT: Okay.

MS. MONICA HINCKEN: Good afternoon, your Honor.

THE COURT: Good afternoon.

MS. HINCKEN: So with respect to the similarly-situated document requests, we're really talking essentially about Request 22, 23, 25, 27, 30 and 32, specifically. And so with respect to the similarly

situated, we have agreed, are ready to narrow the scope of those requests to only those senior managers or above. The plaintiff in this case was a senior manager within his division, who reported directly to defendant Bernier and defendant Dyment. So we've offered that compromise to ensure that they were similarly situated. All of those individuals, you know, reported to the same supervisor, and they were subjected to the same performance standards and discipline standards. And that's really what the Court is looking at when they're determining similarly situated.

So with respect to that, we under, like, with respect to Request 22, which requested the entire personnel file for those similarly situated. We understand, based on previous objections, that defendants have maintained that the BDO does not have traditional personnel files. And so we have agreed to specifically request the documents outlined in request 23, 25, 27, 30, and 32. And so those are all requests that go to the reasons that they're claiming that plaintiff was terminated. So, based on other people who were disciplined, other people who were considered rude in the workplace, other people can receive complaints about their work and --

THE COURT: But, again, we're talking about other people who are similarly situated. Ms. Ditlow, where's the area of disagreement?

MS. DITLOW: Your Honor, our first area of discrim -- I've, you know, appreciated (indiscernible) working together with us after our meet-and-confers and narrowing the scope. One of our objections is you heard them use the term "treatment." We felt that that was a little vague in terms of they're looking for, you know, termination records for precisely disciplinary action. Right now, "treatment" term was a little vague, and it was hard to know, you know, what would potentially encompass that.

THE COURT: Okay. Well, that's something you can meet and confer about and figure out.

MS. DITLOW: Yes. Additionally, we felt it was still a little overbroad. Mr. Dyment, who you asked -- is one of their supervisors. But he oversees the entire region, so technically, everybody reports up to him. So I felt that that was still a little overbroad in the --

THE COURT: Right. It can't be everybody who reports to him; it has to be people who are similarly situated to the plaintiff.

MS. DITLOW: Right. I understand. But they were trying to narrow the scope in -- for those that directly report.

THE COURT: No, I understand. And that comment is essentially directed to plaintiff. It seems to me, though, that you're disagreeing but haven't really gotten down to the nitty gritty of people and which people you're talking about. It seems like there's still room for meeting and conferring. Or no?

MS. DITLOW: I would think that's accurate. Obviously, I will leave it to Ms. Hincken, since it's her request. But I think some additional movement can be made.

MS. HINCKEN: And I think one of the issues is we don't have a clear scope of the people because we have requested an organizational chart, and they have maintained that they don't have those. And so we don't have a way to understand the scope of the people that we're discussing.

But with respect to reporting at the same supervisor, I mean, we're limiting it to senior managers or above, as well, not just anybody who reports to that supervisor.

THE COURT: Yes. But I don't know what "senior

manager" means. There could be senior managers in different types of departments, say; and the requirements for what you do in those different departments, they have many different demands, they may require a different task. So they wouldn't necessarily be similarly situated. But obviously, I just don't know what the scope of what we're talking about it.

MS. HINCKEN: Right. And it's specific to his particular division, the request is.

THE COURT: And SALT's what division?

MS. HINCKEN: The State and Local Tax Division in the Northeast Region.

MS. DITLOW: Your Honor, if I may? And, obviously, Ms. Hincken and I can talk about -- if to the extent I could be (indiscernible) we talk about similarly situated in the New York office, that may, you know, limit the scope to something more manageable.

THE COURT: How many other offices are there within the Northeast --

MS. DITLOW: Within the Northeast Region, I think there's probably seven or eight, total.

THE COURT: Okay, and --

MS. DITLOW: And each one of those would report up to Mr. Dyment, not Ms. Bernier, who's in the New York

office. And then Mr. Dyment oversees the region, so everybody in New York, Ms. Bernier, and then Mr. Dyment; whereas, everybody in the outside offices would similarly, you know, have Mr. Dyment as a direct report.

THE COURT: Right. What do you think of that proposal?

MS. HINCKEN: I think, your Honor, that may work, but we just don't have an idea of what number of people we're talking about. So we don't know if it would be a good way to gauge his treatment in comparison to others.

THE COURT: Well, again, we have to look at what similarly situated. Do you -- Ms. Ditlow, if it was the New York office, how many people do you think you would have in mind that you'd be producing material for?

MS. DITLOW: Your Honor, I don't want to speculate because I don't -- it would just be a guess at this point. But I think certainly, for similarly-situated purposes, it would be individuals who reported up to the same individuals and not where a, you know, third person who is not named anywhere in the Complaint, a manager in an outside office would come in. So I think, certainly, for similarly-situated purposes, the

construct of limiting it to New York would be appropriate for there, regardless of the number of employees.

THE COURT: Okay. I'm not sure I completely followed, but there were people in other offices who were reporting to Mr. Dyment as senior manager, is that right?

MS. DITLOW: Right. So, in the other offices -- Ms. Bernier manages the New York office, and then everybody reports up to the regional head in the other office, for example, in a Boston office. There would be another person in between them who, you know, essentially fills Ms. Bernier's spot. So they would not be similarly situated.

THE COURT: Okay. Let's do this. Let's limit it to the New York office without prejudice to a future application if for some reason plaintiffs think that they have a basis to be seeking similarly-situated persons in other offices.

MR. GOTTLIEB: Your Honor, can we just ask for a disclosure of how many people that may be?

THE COURT: I think she just -- Ms. Ditlow, I thought you just said she wasn't sure?

MS. DITLOW: That's correct.

THE COURT: So that's why I'm saying -- but why don't we have you find out how many people that is and let the plaintiffs know. How long would it take you to find that out?

MS. DITLOW: Hopefully, short -- also the question would be is there a relevant time period that we're looking for -- I think their requests cover a period -- or is it just during the time period of Mr. Redmond's employment so I can properly find out the number of --

THE COURT: Well, what's the relevant time frame we're looking at?

MS. HINCKEN: Well, the relevant scope that we'd originally requested was from January 2012 to present.

THE COURT: When was the period of employment of the plaintiff?

MS. HINCKEN: He was employed from May of 2019.

THE COURT: And you're seeking to go back to 2012? On what basis?

MS. HINCKEN: It's related to prior allegations of discrimination and retaliation by defendant Bernier.

THE COURT: All right, but there has to be some time period that is not overly burdensome and

commensurate to the case. I'm going to say back to 2014, five years before the period of employment.

MS. DITLOW: Your Honor, with that, since it goes a little further back, obviously, I will endeavor along with my client to get the information as soon as possible, but I don't yet know how long that would take in terms of the number of employees that --

THE COURT: That fall into that period, okay.

MS. DITLOW: -- we're speaking of. Correct.

THE COURT: Well, let's set a date by which you will aim to get them that information. Will it take you more than a week?

MS. DITLOW: To be honest, I don't know.

THE COURT: Let's say a week.

MS. DITLOW: Okay.

THE COURT: And if there are problems, you will work it out with the plaintiff.

MS. DITLOW: Absolutely. Thank you, your Honor.

THE COURT: All right. That's similarly situated.

Let's see, there's a question about hit report. And so defendant has claimed that the discovery has been overbroad and overly burdensome, and the plaintiffs say

they would like a hit report so that they have a basis for assessing that and discussing it. Has any further progress been made on that front?

MS. DITLOW: Your Honor, not further progress, but I do want to correct the record. Following submission of our letter, Ms. Hincken reminded me that they did previously request it. It was an oversight on my part. It did not come up in any of our subsequent meet-and-confers, so it was not something that we had an opportunity to discuss further.

Notwithstanding that, I did respond to Ms. Hincken and say that, you know, we did not feel that at this time a hit report based on the overbreadth of custodians and time period and term request was appropriate. We've already produce over 3,000 documents, many of which are extensive and relate to the individuals on which we're seeking ESI on and that the undertaking, you know, capturing that data, running the hit report, going through and understanding how much of the potential documentation would be not proportional to the needs of this case, considering the voluminous discovery we've already conducted.

THE COURT: But do you have a hit report; and if so, what search terms was it based on?

MS. DITLOW: The entirety of their request, I believe.

THE COURT: Including terms which are disputed right now --

MS. DITLOW: Correct.

THE COURT: -- in terms of, you know, Jewish or sex or whatever? Okay. So you have that hit report, and the question is what is the extent of documents that may be covered by that versus what it would look like taking out terms that you say aren't relevant, essentially.

MS. DITLOW: Your Honor, let me clarify. We have not run a hit report based on all the terms and custodians they've requested. To undergo and retrieve that data, we felt that even on this stage based on the lack of relevancy, the lack of proportionality, it was an unnecessary exercise, you know, unless the Court tells us otherwise.

THE COURT: Okay, so what's the hit report you're referring to?

MS. DITLOW: Their request. I just wanted to correct the record that --

THE COURT: Oh, okay, there is no actual hit report?

MS. DITLOW: Correct, yes.

THE COURT: Got it.

MS. DITLOW: She had made a request. In our letter I had said they had not yet requested it, and I just wanted to make it clear to the Court that my recollection was incorrect.

THE COURT: All right, anything you want to say about that, Mr. Gottlieb?

MR. GOTTLIEB: Well, your Honor, I mean, there are actually a number of other items, just sort of basic document items that still need to be addressed before we even get to ESI.

THE COURT: Well, a hit report was A under your Section 3. So I was just starting there first. So where are we before that?

MR. GOTTLIEB: Well, like I mentioned, I mean, we did include every last thing in our letter to -- limited by space. So I'm happy to --

THE COURT: There's hit report, custodians and search terms.

MR. GOTTLIEB: Right. No, those are the electronic discovery items, but Section 2 of our letter outlined the major document issues. But there are a number of other document issues that are not mentioned

in the letter. Again, we mentioned in the footnote that there were other items that we still --

THE COURT: Okay, well, I can't address those obviously here because they're not teed up for me. I don't know if you've fully met and conferred on all those. Have you?

MR. GOTTLIEB: We've met and conferred a number of times, probably close to half a dozen times within letters and so forth, as well. So we can either -- I'm happy to address those issues however you'd like, with a further letter submission or with a motion --

THE COURT: Yes, we're going to have to do it with some further submission, but we'll get to that in a minute in terms of what the scope should be.

What I have in the letter right now is hit report, custodians, and search terms.

MR. GOTTLIEB: Yes.

THE COURT: So there were -- as to custodians, there was an issue about four different individuals, Shannon Ford, Rocky Cummings, Katrina Marinen, and Tracy -- I'm not going to try to pronounce it -- E-j-e-r-e-k-h-i-l-e. And the parties have a disagreement about the extent to which those persons should be custodians. And has anything been resolved there?

MR. GOTTLIEB: Nothing has been resolved, your Honor. I mean, these are all individuals that the defendants have identified in their initial disclosures as being individuals likely to have relevant information. So we're a bit befuddled how they're not relevant for ESI protocol. The defendants agree they have relevant information. You know --

THE COURT: Well, stop there.

So, Ms. Ditlow, what do you have to say about that? If you identify these persons as persons likely to have relevant knowledge, why wouldn't they be appropriate custodians?

MS. DITLOW: Well, your Honor, because the scope of what they're asking us to search for is beyond the scope. And we've identified and already produced documentation relevant to where we've identified that they would have knowledge and information. Most --

THE COURT: But that's not really directly answering the question. Why wouldn't they -- with whatever scope you want to apply that you think should be applied, why wouldn't they be included within that? Are you suggesting that all their documents they're likely to have would have been in someone else's, another custodian's possession?

MS. DITLOW: No, your Honor. I think -- well, that is probably true, also -- but all their documents that are relevant, based on the knowledge and information they have had, based on plaintiff's allegation, we have already produced.

THE COURT: Oh, so in other words, you've produced -- but have you so produced from them or from elsewhere?

MS. DITLOW: Produced from them.

THE COURT: Oh, okay, so they were included as custodians, then?

MS. DITLOW: So, we did a 3,000-page production based on targeted searches as opposed to blatant overall ESI; we're collecting their entire mailboxes.

THE COURT: No, I understand. But they were people whose documents were -- the defendant collected documents from in order to produce discovery in this case; is that right?

MS. DITLOW: Yes.

THE COURT: Okay. And have you otherwise agreed to individuals who would be included within ESI discovery?

MS. DITLOW: Other individuals we have agreed upon.

THE COURT: Okay. So this again goes back to ESI. And so what I hear defendants saying, Mr. Gottlieb, is that insofar as they are likely to have information relevant to the dispute, that is information that was and can be located by whatever targeted means they used; but to include them generally in ESI would be disproportional to the litigation. So it's not necessarily inconsistent, in other words.

MR. GOTTLIEB: Well, your Honor, respectfully, I mean, I heard something different. What I heard was they used their own unilateral search terms that were not disclosed to us -- so there's a universe of documents for, let's just say, Shannon Ford. There's a universe of documents that could contain relevant information. They narrowed that universe of information using whatever search terms they felt appropriate without disclosing what those search terms were to us. And so we have no way of knowing whether they conducted a reasonable, good-faith, diligent search. And the way that's done is the parties negotiate over the search terms. So they can't just say like, "Oh, we're going to search that how we want; we're not going to disclose to you how we did it. But just trust us, it was diligent and thorough."

THE COURT: What you've just said I don't disagree with in principle. But, again, I'm not sure I heard it that way.

But, Ms. Ditlow, can you clarify exactly what defendants did with respect to these individuals and collecting documents?

MS. DITLOW: Sure. Absolutely. I mean, taking Ms. Ford, for example, she is in BDO's Human Resources Department. We, you know, collected all of her emails related to plaintiff or plaintiff's complaint with other people within BDO. Now, to have her entire mailbox then searched for, you know, terms such as "harass," we think is entirely disproportionate based on this Complaint, when we have -- and this is not a targeted search where we applied certain things. As we said, we collected everything related to Mr. Hafizov and Ms. Shannon Ford, who was part of HR. To go beyond that and to then have to search through relevant documents for an entire HR organization based on, you know, very broad terms would be an undertaking that just certainly isn't proportional to this case when we've already produced that relevant information.

THE COURT: All right, so one thing I want you to do is just in writing disclose to the plaintiffs what

was the scope of what you searched for and obtained from these individuals already. And then there'll be a discussion or an issue about whether that's sufficient from the plaintiff's perspective or whether they think these individuals should be included in full-scope ESI. Ms. Ditlow, you've provided a reason why it may be appropriate for them not to be -- I don't know. But I think at the very start we need to have you disclose what it was exactly that you've searched for and produced. So, again, I'd ask you to do that within a week.

I think, you know, part of the problem here is running custodians and search terms, they somewhat tie together because they both influence the breadth and burden and proportion of what's going on. But at least there are four individuals identified with respect to custodians. Mr. Gottlieb, take a look at what defendants say was done, and then have a discussion about whether those individuals still need to be included within full-scope ESI.

All right, in terms of the search terms, this ties back to the first issue because, as I understand it, some of the terms that are asked to be used include *discrimina!*, *retalia!*, *harass!*, *hostile!*, *offensive!*,

sue!, *complain!*, *gay homo!*, *Jew!*, *Shabbat!*, *Sweeney* and *recording!*, and many others. So are these words that plaintiff proposed to use individually, or were they in combination, Mr. Gottlieb?

MR. GOTTLIEB: Those were individual terms for, I believe, Ms. Bernier and Mr. Dyment, the two individual defendants. Having done a lot of ESI work, it's possible some of them may yield a large volume of hits, in which case we could consider using connectors or various things that can be done to bring the volume in line with what's appropriate. But we don't know; we don't have the hit report at this point.

THE COURT: Well, and there is no hit report at this moment, it sounds like. And the defendants have said they haven't even tried running these terms to see. But I think that's because in the first instance one would look at this and say this is quite broad in terms of what it may be looking for.

Just something you said, just tell me again, these were terms that were proposed to be used individually for just two individuals, or was it more people?

MS. DITLOW: Mr. Montorio, as well, I see a member of those --

MR. GOTTLIEB: Maybe for three individuals.

THE COURT: Maybe three?

MR. GOTTLIEB: I can go back and look at it to give -- if your Honor gives me a moment. Those were, I believe, for three individuals -- or maybe -- we have a heavily redlined ESI protocol. I believe it's for three people, your Honor.

THE COURT: All right. So it says -- put it this way, it's a relatively contained number. It's not like it's being applied to tens or twenties of people. Ms. Ditlow, why can't you at least run a hit report to see what would happen if you did run these terms across those individuals?

MS. DITLOW: Your Honor, I will say we can. I think we had not yet endeavored to do so. We were hoping to reach an agreement on custodians, so when we are able and work with the IT departments between our firm and our client; that we are gathering everything and loading it up into the server at that time. Obviously, before we had settled on the custodians, we were not yet undertaking that. If we can agree at least at this point that the custodians that we've agreed upon we would move forward with and conduct a hit report on, I can begin that process.

THE COURT: Well, I think that makes sense that we start getting some information. What do you think, Mr. Gottlieb; do you agree?

MR. GOTTLIEB: I think so, too.

THE COURT: Okay. Yes, because it will be -- you know, look, there's going to be one -- in determining production, obviously, and what should be produced, burden and scope and proportionality are going to be important. And hits, hit report may tell us, at least give us something information, certainly not the end-all and be-all, by any means. How long do you think it will take to get that?

MS. DITLOW: Your Honor, can we get back to the Court and plaintiff at least by tomorrow? We'd have to connect with the IT Department.

THE COURT: Yes, why don't you just speak with opposing counsel about it? If for some reason there's a disagreement saying you're going to take way too long and you need it sooner, then you'll let me know, but --

MS. DITLOW: We will obviously endeavor to --

THE COURT: -- I suspect you'll be able to work it out.

MS. DITLOW: -- it as soon as possible.

Mm-hmm.

THE COURT: All right, so you'll be running the terms sought by the plaintiff against those three individuals that those terms are indicated for use with. So it's hit report, custodians and search terms, okay, all of which -- a lot still hasn't been resolved, obviously; but I think we're on our way to doing that. And there is the large looming issue of really what is going to be relevant here. I'm going to take a little further look into that. If you would like to brief that further, that's fine. And why don't -- I take it that's something you'd like to do, Mr. Gottlieb?

MR. GOTTLIEB: It is.

THE COURT: Okay. So let's say a brief of no more than 10 pages; would that be okay? I think that should be sufficient.

MR. GOTTLIEB: Sure.

THE COURT: And when would you be able to get that by?

MR. GOTTLIEB: Two weeks, your Honor.

THE COURT: Okay. Ms. Ditlow, is 10 pages okay with you; and how long to respond?

MS. DITLOW: Two weeks, your Honor?

THE COURT: Okay. Ten pages, okay?

MS. DITLOW: Yes, your Honor.

THE COURT: All right, and for reply I'll give you five pages, due a week later, okay?

MR. GOTTLIEB: Okay.

THE COURT: So it will be two weeks, two weeks, one week. I'll put that in an order so you have specific dates.

And then if there are other issues -- you mentioned, Mr. Gottlieb -- that aren't in the letter that are teed up and you think are ripe, you can put an additional letter on that. If you have -- I don't want to deprive you of your ability to say what you need to say. Let's say there were six issues and it took two letters to do that, I don't have a problem with that. Just try to be economical as best you can. Hopefully, it's not just a letter per issue. So I'll leave it to your discretion as to how you think it best to package that. You'll submit those, and defendant will respond. Depending on the number of issues raised, the defendant may need more than the typical three days. Just let me know, once you see whatever it is they submit, as to what you think you need. Okay?

MS. DITLOW: Your Honor, I just want to raise, also in response to Mr. Gottlieb's premotion letter, we also raised in our premotion letter. I just wanted to

make sure that we either get an opportunity to address that here today or in subsequent briefings.

THE COURT: Let's take a look.

Well, one of them was about the prior lawsuit. To me, that goes to scope that we're talking about; that's the Sweeney lawsuit. And then what else was it that you thought needed addressing that's not addressed -- we haven't addressed already?

MS. DITLOW: Yes, generally and prior to your Honor being in the courtroom, Mr. Gottlieb informed us that they are working on producing some additional documents. But I think a number of post-termination documents related to plaintiff's conduct still remain and which there's a dispute over, as well as some communications with other BDO current and former employees, as well as clients.

THE COURT: So Mr. Gottlieb, is there a disagreement there on those issues?

MR. GOTTLIEB: I'm not -- I'm sorry, your Honor; I just am not following what -- I'm not sure what I'm supposed to be responding to.

THE COURT: Well, in their letter of May 24th, at ECF-53, in item 2B, Discovery Issues Regarding Plaintiff's Post-Termination Retaliation Allegation, it

seems to me that's one of and perhaps the both items that were being addressed by Ms. Ditlow.

MR. GOTTLIEB: Well, but that actually category, that's an issue that we've been seeking discovery from defendants on post-discrimination *[sic]* retaliation against him that we have not been able to obtain.

THE COURT: Okay.

MR. GOTTLIEB: So I'm not --

THE COURT: Did I get the issue wrong, Ms. Ditlow?

MS. DITLOW: No. I think that's correct. In fact, the middle of the paragraph highlights that we are still seeking, awaiting documentation related to efforts by plaintiff to mitigate his damages, including post-termination efforts he made, correspondence between plaintiff and other current and former BDO employees, including Mr. Montorio, which he said he would be providing. But Mr. Sweeney, Mr. Jimenez and Ms. Ejerekhile, medical records related to mental health, plaintiff's deficiencies --

THE COURT: Okay, okay, stop there.

MS. DITLOW: Yes, sorry.

THE COURT: So but, you know, I think you've

been pointing out that those haven't yet been produced. But is there a dispute as to whether they will be produced?

MS. DITLOW: Regarding the post-termination conduct, which relates to a lot of information related to plaintiff's travel, plaintiff's social media account, they have refused to produce that, to my knowledge and based on our prior conversations.

THE COURT: Okay, Mr. Gottlieb?

MR. GOTTLIEB: Okay, so this category of 2B of their letter is actually in response to 2B of our initial letter, which again we're seeking discovery from BDO about conduct against our client after he was terminated, which is an item I'd like to address. But to address what Ms. Ditlow said, we have agreed to produce documents reflecting his job search -- he now has another job, and I don't mind saying it on the record -- the other side knows he's fully mitigated in terms of his damages; he has another job. Maybe I shouldn't be so definitive, but he's largely mitigated. And so we've produced documents and evidence to substantiate that.

The issue that they have been seeking discovery on is after he was terminated, he did some travel. Now,

while he was traveling, he was applying for jobs online, on various websites and so forth. They've sought documents and information relating to his travel. And that we have not agreed to produce because we do not think it's relevant so long as we provide the documents that relate to his job search. And if he's not making enough efforts to obtain a new job, that will be reflected in the lack of emails seeking jobs, job applications applied for online. But where he physically is when he's looking for a job, no, we do not think that's relevant, your Honor.

THE COURT: Okay, but I -- well, the letter doesn't -- I didn't think referred to travel, but I do see "correspondence between plaintiff and other current or former BDO employees" and then "post-termination activities related to his allegations." I'm not even sure what that would be, necessarily. "Evidence regarding emotional distress," I mean, these are all very basic things. But what about the "correspondence between plaintiff and other current or former BDO employees," is that something that's in dispute?

MR. GOTTLIEB: Well, your Honor, they've asked for all communications, no matter that the communication is about, between plaintiff and a list -- well, they

request that every single current or former BDO employee, including but not limited to, and they gave a list of like a dozen different people. We said we would -- even though we think it goes far beyond the scope -- fine, we'll give you all of the communications he has with the specifically listed people. And so we've agreed to produce that, and we've provided that for all but one person who's or -- I think all but one person, and we just got that last sort of tranche of communications from our client. And before this conference started, I just let Ms. Ditlow know we'd be providing it.

THE COURT: Okay, so I don't hear anything in dispute except travel documents. Is there anything else, Ms. Ditlow?

MS. DITLOW: Well, I will say we pointed out to them that, despite their agreement, that we have knowledge that they're withholding documents. In fact, we've produced documents from other BDO current and former employees which show communications between them and Mr. Hafizov that they have failed to produce. So there's documents that they are withholding or failed yet to produce.

THE COURT: But have you brought that to their

attention?

MS. DITLOW: Yes. Yes, we have.

THE COURT: Okay.

MS. DITLOW: Additionally, the social media accounts, not only does it go to the travel-related documents, not only does it go to mitigation efforts regarding finding subsequent employment and the length of time that he would be unemployed, but also as emotional distress claims. To the extent that he would get up there and testify during a trial about the hardships, how this made him suffer emotional distress resulting from the alleged discrimination-retaliation, and then a month later we have, you know, smiling, happy accounts of him traveling, I certainly think that would undermine claims of emotional distress and would be relevant there.

THE COURT: Mr. Gottlieb?

MR. GOTTLIEB: On the communications with the former employee or the other employee that Ms. Ditlow said we are withholding, I believe that is referring to his communications with Mr. Montorio.

MS. DITLOW: Mr. Montorio and Mr. Jiminez.

MR. GOTTLIEB: Okay, and the Montorio documents, we just received that tranche from our

client. I let Ms. Ditlow know we would be producing that. I don't think there are any -- I'll have to look back on that Jiminez, so --

In terms of social media posts, no, respectfully, your Honor, I don't think a full-scale production of all of the plaintiff's social media posts are put at issue just by virtue of a wrongful termination claim.

THE COURT: Is he seeking emotional distress damages beyond garden variety?

MR. GOTTLIEB: We're still determining that, your Honor.

THE COURT: I mean, certainly, if he's looking for more than that, it might expand the scope of what would be appropriate.

MR. GOTTLIEB: I understand that. And this is an issue that we're still very much speaking to our client about because of what it does implicate in terms of disclosures. So we're talking about that with our client, and we can certainly make a decision on it; and once we make that decision, we understand that will implicate discovery.

THE COURT: Ms. Ditlow?

MS. DITLOW: I think we can then, you know,

agree to revisit the issue upon that.

THE COURT: All right, so I'm going to just deny that without prejudice at this time. Absolutely you can bring it up at a later point if it still is relevant.

Anything else we need to discuss? Mr. Gottlieb?

MR. GOTTLIEB: Well, the one other -- well, there's one item and then a smaller item. So, you know, we raise this issue in 2B of our letter, post-termination retaliation against plaintiff. That was really our issue. And part of the allegations in this case, your Honor, is that, similar to another former employee who was terminated by Ms. Bernier named Dennis Sweeney, who also had a case that was before the Southern District, there was retaliation against him after he was terminated, after he retained counsel. The same thing happened to Mr. Sweeney. It's in our --

THE COURT: Yes. Is that what's going to be the subject of the amendment?

MR. GOTTLIEB: Well, that's -- there was then yet another post-termination retaliatory act, we believe. But just after Mr. Hafizov retained our firm, we sent a letter outlining his plans and outlining that

it was similar to the claims of Mr. Sweeney, which were all public record. In response, we got a letter from BDO's counsel saying that the letter that we sent on Mr. Hafizov's behalf was what they believed a breach of a settlement agreement. And we --

THE COURT: Right. They alleged breach of contract.

MR. GOTTLIEB: -- included in our Complaint that that was done to chill either him or his counsel.

THE COURT: Yes.

MR. GOTTLIEB: And they moved to get that stricken, and it was not.

THE COURT: Right.

MR. GOTTLIEB: All we've sought to do is to take discovery on the decision that was made to engage in that, what we believe was a threat. And defendants have resisted engaging in discovery on that topic. And it's fair game for discovery because it's part of the case.

THE COURT: Ms. Ditlow?

MS. DITLOW: Your Honor, Mr. Gottlieb conflates the sentence there, to be -- it was a letter signed by me -- you read the letter. We were not in any way suggesting that Mr. Hafizov, who is not a party to the

prior settlement agreement, was in any way in breach. You know, without divulging the terms of the prior settlement agreement, we were suggesting that, you know, including certain facts and circumstances of the prior case by Mr. Gottlieb in the letter could potentially be. And in no way was that a threat or retaliation against Mr. Hafizov. And beyond the letter itself, which was written by me, signed by me, I don't know what other discovery there is related to it.

THE COURT: Well, so just to unpack that --

MS. DITLOW: That would not be --

THE COURT: -- just on --

MS. DITLOW: -- covered by privilege.

THE COURT: Yes, just -- I was going to unpack it a bit and say certainly a lot of discovery around that, to the extent there is, would be subject to privilege, presumably. And so what is it that the plaintiff is actually seeking, decision-making process by business folks as to whether to make that so-called threat as alleged?

MR. GOTTLIEB: Well, at a very basic level, we've asked in interrogatory, asking BDO to identify who was involved in agreeing or approving that which, again, we believe was a threat. And BDO's refuse -- somebody

has to take ownership of that.

THE COURT: You can dis -- look, there are allegations about that in the Complaint -- you can disagree about what it is or isn't and whether it's a good claim or not. And if there were a motion to dismiss that were appropriate, that's certainly an avenue, motion for summary judgment, whatever it is. But right now it's something that's live, and discovery is appropriate on it. And I would think that an interrogatory that asks who was responsible for writing it at least can be answered. Why not, Ms. Ditlow?

MS. DITLOW: If the question is who was responsible for writing it, I signed the letter. We --

THE COURT: Okay. Well, I don't know what the interrogatory says. If the interrogatory is asking for identification of people involved or somehow connected to a letter, answer it. Okay? That's what I'm saying.

Is there, beyond the interrogatory, was there other discovery related to that issue, Mr. Gottlieb?

MR. GOTTLIEB: Well, it was -- and documents relating to that decision. And they may be privileged, and maybe they just need to be logged. But I don't think Ms. Ditlow identifying herself as the author of the letter really addresses the issue. The issue is who

-- the claim is against BDO. And if BDO is going to wash its hands of it and blame, you know, put it on Ms. Ditlow, that's their decision. But we're entitled to a legitimate response to the interrogatories.

THE COURT: Right. It may be that -- I don't know if they have inside counsel. It might have been inside counsel, it might have been an inside business person. It might have been both, might have been others. I don't know. It might have been a secretary. Who knows? So just answer the interrogatory. And if there are documents that are not otherwise subject to privilege or some other protection that are about the decision to send that letter, then those should be produced -- if there are any. There may not be.

MS. DITLOW: Your Honor, let me clarify. The decision to respond to the letter in total or that singular sentence in the letter?

THE COURT: Well, it was about the letter that you sent.

MS. DITLOW: So Mr. Gottlieb sent a pre-litigation letter to BDO. We responded to that.

THE COURT: Ah. So in regards to that portion of it. That would seem appropriate. And if there is reason why that wouldn't be appropriate, Mr. Gottlieb,

you can let me know later. But it seems like it should be.

MR. GOTTLIEB: Well, I guess, your Honor -- I think it should just -- the interrogatory itself should just be responded to. It's interrogatory number 19.

THE COURT: Well, I have no problem with that with that with respect to the interrogatory identifying the persons. But in terms of documents about the decision to send a letter, there is going to be a lot of documents potentially about various things in the letter that have nothing to do with the portion you about.

MR. GOTTLIEB: Correct.

THE COURT: Okay. So for the documents, I'm limiting it in that fashion.

All right, anything else?

MR. GOTTLIEB: The last thing, your Honor, is we have a deadline to amend our Complaint to include Title 7 claims of June 22nd, just give the date of our right to sue. So I understand that our motion for leave to amend, which includes other things, is outstanding. But we would like to be able to amend just to include Title 7 claims before our 90 days expires.

THE COURT: Ms. Ditlow, do you have a position on that?

MS. DITLOW: No. We have no objection to the amendment.

THE COURT: All right, so it is so granted.

MR. GOTTLIEB: Thank you, your Honor.

THE COURT: When do you think you'll do that?

MR. GOTTLIEB: Within the next week or two.

THE COURT: Okay. All right, I think that's it. Anything else?

MR. GOTTLIEB: Not from plaintiff.

THE COURT: Anything from Ms. Ditlow?

MS. DITLOW: Nothing from defendants.

THE COURT: All right. Very nice meeting you all. And we'll move things forward, and we're adjourned. Thank you.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Hafizov v. BDO USA, LLP et al, Docket #22-cv-08853-JPC-RWL, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: June 12, 2023